

HOUSE No. 686

By Mr. Rodrigues of Westport, petition of the Associated Industries of Massachusetts, Jeffrey Davis Perry and others for legislation to make certain changes in the product liability system of the Commonwealth. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Robert R. Ruddock,	Jeffrey Davis Perry
Executive VP,	Stephen M. Brewer
Government Affairs,	Mary S. Rogeness
Associated Industries	Michael J. Rodrigues
of Massachusetts	Richard T. Moore

In the Year Two Thousand and Five.

AN ACT RELATIVE TO REFORMING THE STATE'S PRODUCT LIABILITY SYSTEM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 231 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by adding after
3 section 85Z the following new section:—

4 Section 85AA. A product supplier shall not be liable in any
5 product liability action for harm caused by failure to provide ade-
6 quate warning or instruction, unless the plaintiff proves by a pre-
7 ponderance of the evidence that, at the time the product left the
8 control of the supplier, and in light of the technical, medical, and
9 scientific knowledge available at the time the product left the con-
10 trol of the supplier, the supplier knew or reasonably should have
11 known of the danger that caused the plaintiff's harm and failed to
12 provide adequate warning or instruction concerning such danger.

13 A product supplier shall not be liable in any product liability
14 action for harm caused by the design or formulation of a product,
15 unless the plaintiff proves by a preponderance of the evidence
16 that, at the time the product left the control of the supplier, an

17 alternative design or formulation was commercially and techni-
18 cally feasible that would have prevented the harm for which the
19 claimant seeks to recover compensatory damages without substan-
20 tially impairing the utility of the product.

21 For purposes of this section the term “product liability action”
22 shall mean any action brought for, or on account of, death, per-
23 sonal injury or injury to property caused by a product which is
24 claimed to be defectively designed, or for which it is claimed that
25 an adequate warning or instruction was not provided, irrespective
26 of whether such action is based on negligence, strict liability,
27 breach of warranty, or any other legal theory.

28 This section applies to all causes of action pending on or com-
29 menced on or after the date of the enactment. This section shall
30 take effect upon enactment.

1 SECTION 2. Chapter 231B of the General Laws, as appearing
2 in the 2002 Official Edition, is hereby amended by adding the
3 following new section:—

4 Section 5. (a) In any civil action, the court, unless otherwise
5 agreed by all parties to the action, shall instruct the jury to answer
6 special interrogatories or, if there is no jury, shall make findings
7 indicating both (1) the total amount of each plaintiff’s damages,
8 and (2) the percentage of the total fault of all persons that con-
9 tributed to the plaintiff’s damages, including any plaintiff, defen-
10 dant or other person not named as a party to the action.

11 (b) In determining the percentages of fault under subsection (a),
12 the trier of fact shall consider both the nature of the conduct of
13 each person at fault and the extent of the causal relation between
14 the conduct and the damages.

15 (c) The court shall determine the award of damages to each
16 plaintiff in accordance with the findings under subsection (a), and
17 shall enter judgment against each party, including any third-party
18 defendant, except that a person shall not be required to pay non-
19 economic damages in an amount greater than his or her percentage
20 of fault as found under subsection (a) (2).

21 (d) The term “non-economic damages” means subjective, non-
22 monetary loss resulting from harm, including pain, suffering,
23 inconvenience, mental suffering, emotional distress, loss of
24 society or companionship, loss of consortium, injury to reputation,
25 and humiliation.

26 (e) This section shall not apply to actions for intentional torts,
27 or to judgments against two or more defendants who are found to
28 have consciously acted in a concerted effort.

1 SECTION 3. Chapter 260 of the General Laws, as appearing in
2 the 2002 Official Edition, is hereby amended by adding the
3 following new section:—

4 Section 20A. (a) A products liability action shall not be com-
5 menced more than twenty years after the initial date of sale or
6 lease of the product for use or consumption.

7 (b) The twenty-year limitation provided for in subsection (a)
8 shall not apply to the following situations:

9 (1) where a manufacturer or seller of a product provides any
10 express written warranty that the product can be used for a period
11 longer than twenty years. In such case the twenty-year limitation
12 shall be extended pursuant to the terms of the express written war-
13 ranty.

14 (2) if the harm, caused within twenty years after the time of
15 delivery, did not manifest itself until after that time.